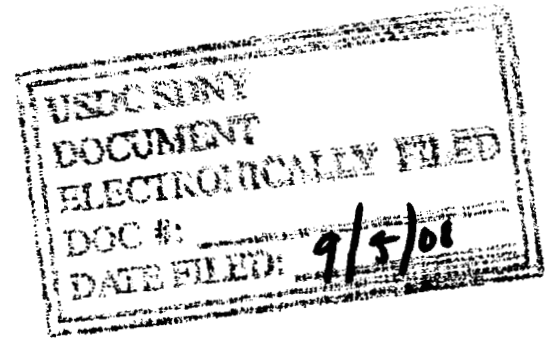


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
EARL B. GARVIN,

Petitioner,

- against -

DALE ARTIST,

Respondent.  
-----X

**ORDER**

08 Civ. 5285 (PAC)(FM)

**FRANK MAAS**, United States Magistrate Judge.

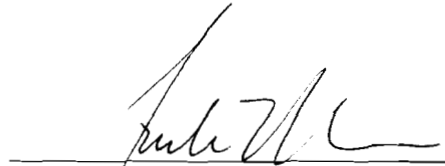
Petitioner Earl B. Garvin ("Garvin") commenced this pro se habeas proceeding on June 10, 2008. (Docket No. 1). By order dated August 7, 2008, I directed the Clerk of Court to serve a copy of Garvin's habeas petition upon the respondent and that the respondent file and serve its answer on or before November 10, 2008. (Docket No. 5).

By letter dated July 10, 2008, but not mailed until August 29, 2008, Garvin requested, in substance, that his petition be stayed because he has filed a motion in Supreme Court, New York County, to vacate his judgment of conviction pursuant to Section 440.10 of the New York Criminal Procedure Law based on ineffective assistance of counsel and various due process violations. (See letter from Earl B. Garvin to the Court, dated July 10, 2008 (Attachs.)).

In Zarvela v. Artuz, 254 F.3d 374, 381 (2d Cir. 2001), the Second Circuit cautioned that such a stay should be limited in time, with the petitioner ordinarily granted thirty days to initiate exhaustion and an additional thirty days to return to this Court once his claims are fully exhausted. Here, Garvin has already complied with the first deadline, having filed his Section 440.10 motion on or around June 27, 2008. (Id.). Accordingly, the stay is granted on condition that Garvin file his amended habeas petition within thirty days after exhausting his state court remedies with respect to that motion.

SO ORDERED.

Dated: New York, New York  
September 4, 2008

  
FRANK MAAS  
United States Magistrate Judge

Copies to:

Hon. Paul A. Crotty  
United States District Judge

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